

2007 DRAFTING REQUEST**Bill**Received: **12/06/2007**Received By: **mglass**Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Wood (608) 266-1194**By/Representing: **Tim Fiocchi**This file may be shown to any legislator: **NO**Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - parks and forestry**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.WoodJ@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Use of managed forest land for commercial recreation

Instructions:Eliminate prohibition against commercial recreation on managed forest land that was created in budget.
May do it but get only a 50% "tax break"

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	mglass 01/14/2008	lkunkel 01/15/2008	pgreensl 01/15/2008	_____	cdurst 01/15/2008		S&L
/2	mglass 01/31/2008	lkunkel 02/01/2008	nnatzke 02/01/2008	_____	sbsford 02/01/2008		S&L
/3	mglass	lkunkel	nnatzke	_____	mbarman	mbarman	

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02/06/2008	02/06/2008	02/06/2008	_____	02/06/2008	02/07/2008		

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WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE GARY TAUCHEN
FROM: Mark C. Patronsky, Senior Staff Attorney
RE: Legal Issues Regarding Recent Changes in the Managed Forest Law Program
DATE: January 9, 2008

You have asked for an analysis of the potential for a successful legal challenge to recent statutory changes in the Managed Forest Law (MFL) program. These statutory changes prohibit a person with land entered in the MFL program from leasing the land to another person, in return for a payment or other compensation that allows the lessee to engage in recreational activity, such as hunting, on the MFL land. The new statute applies to both pre-existing MFL entries and to land entered in the MFL in the future.

A person who has land entered in the MFL program (whether or not the MFL landowner has leased the land to others for recreation), or a person who currently leases MFL land for recreation, could potentially sue the state to challenge the constitutionality of the statute. The basic question in the lawsuit would be whether the plaintiff (the landowner or recreational lessee) has rights under an existing recreational lease or rights to enter a future recreational lease of land in the MFL program, and that the statutory changes unconstitutionally deprive the person of those rights.

BACKGROUND INFORMATION ON MFL STATUTES AND STATUTORY CHANGES

MFL Program

A landowner who enters land in the MFL program must comply with certain conditions. These conditions require a minimum forest cover of 80% of the parcel entered, preparation and compliance with a timber management plan, and payment of an application fee, as well as certain other provisions. In general, land entered in the MFL must be open to specific public uses. The owner of land entered as open MFL land must permit public access for hunting, fishing, cross-country skiing, sightseeing, and hiking, although the owner may prohibit use of the land with motor vehicles. The property owner is subject to penalties for unauthorized cutting of timber and must pay a tax at the time of harvest. Land is entered in the MFL for either a 25- or 50-year period.

The benefits to the state are set out in the statement of legislative purpose, which was enacted by the Legislature in 1985 when the MFL program was created:

77.80 Purpose. The purpose of this subchapter [the MFL program] is to encourage the management of private forest lands for the production of future forest crops for commercial use through sound forestry practices, recognizing the objectives of individual property owners, compatible recreational uses, watershed protection, development of wildlife habitat and accessibility of private property to the public for recreational purposes.

The landowner who enters land in the MFL program receives certain benefits from that entry. The benefits to the property owner include payment of a reduced annual tax (compared to regular property tax rates), assistance with timber management, and authorization for the landowner to close up to 160 acres of land entered in the MFL in each municipality and to exercise control over who may enter the closed portion of the MFL land.

Recent Statutory Changes

The MFL program was modified in the 2007-08 State Budget, which has been passed by the Legislature and signed by the Governor. The Department of Natural Resources (DNR) has issued a summary of changes to the MFL in a memorandum, dated October 30, 2007, and describes these changes as follows:

With the passing of the 07-09 state budget a change to the MFL program was made. This statutory change states that effective January 1, 2008:

- No person may enter into a lease or other agreement for consideration or compensation if the purpose of the lease or agreement is to permit persons to engage in a recreational activity.
- A person who currently has a lease or other agreement for consideration on closed MFL land must terminate the lease before January 1, 2008 if that person wishes to continue receiving the benefits of the MFL program.
- Non-profit organizations are exempt if the lease or agreement has consideration or compensation solely for reasonable membership fees and is approved by the Department of Natural Resources.

It should be noted that although the second point in this description refers only to "closed" MFL land, the language in the Budget Act applies to both closed and open MFL land.

Reasons Cited by DNR for Statutory Changes

The October 30, 2007 memorandum from the DNR described the reasons for the statutory changes.

Why was the MFL law changed to exclude the ability to be compensated for recreational rights on closed lands? The MFL program was written in 1986 to allow landowners a property tax reduction and deferment in return for providing public benefits from their woodlands for many years to come. The public benefits include the production of forest products, creation of jobs, clean air, clean water, wildlife habitat and providing public recreation, specifically hunting, fishing, hiking, sight-seeing and cross-country skiing. Landowners are allowed to keep up to 80 acres of land closed to public use (more recent entries pay higher fees and can close up to 160 acres). Unfortunately, some landowners have divided their properties to create the appearance of different ownerships in an effort to close more land than would otherwise be allowed under the law. In some cases, these lands are subsequently leased to hunters for revenue. More landowners (particularly those with large holdings) have decided to divide their properties, close lands and lease recreational use rights. As a result lands that would otherwise be open to the public as part of the MFL program are no longer available. The Legislature's decision to change the law appears to have been done in an effort to remove the incentive to divide property, close lands to public access and receive compensation for allowing recreational uses.

LEGAL ISSUES AND THEIR POTENTIAL RESOLUTION

Your specific question is "whether the Legislature can make changes such as these to existing contracts and whether the penalties can be enforced." Basically, your question is whether the new statute, if challenged by a plaintiff who is adversely affected by the statute, might be found to be unconstitutional by a Wisconsin court.

Contract Clause

The Wisconsin Constitution, Article 1, Section 12, prohibits the impairment of the "obligation of contracts" by the Legislature. This provision of the Constitution is usually interpreted as prohibiting government from retroactively interfering with matters that are governed by contract. The Contract Clause could be the basis for a legal challenge to the new statute.

The plaintiff in a lawsuit under the Contract Clause must, of course, be a party to a contract that is adversely affected by the new statute. A contract is an agreement between two or more persons (a person may be an individual, a business entity, or a governmental unit) to do something or to refrain from doing something in exchange for something of value. There appears to be little room for dispute that the lease of MFL land for recreational use, between the MFL owner and the lessee, is a contract. If the lease exists on January 1, 2008, the statute requires the MFL owner to cancel the lease, or to withdraw the leased land from the MFL program and pay the penalties.

If the reviewing court finds that there is an existing contractual relationship and that the relationship is impaired, the court will commence the analysis under the Contract Clause. Wisconsin courts use a step-by-step analysis to determine if a statute violates the Contract Clause. These are questions of law for the reviewing court. The first step is to determine whether the statute is a

substantial impairment of contract, rather than a minimal or not an impairment. (The consequences for the owner--either cancel the lease, or withdraw the leased land from the MFL--suggests substantial impairment.) If the impairment is substantial, the second step is for the court to determine if the legislation has a significant public purpose. (Some purposes of the new statute, as suggested by the DNR, are to keep more private land available for public use, and to reduce the amount of forested land that is divided into smaller parcels.) The court must decide whether these or other purposes of the statute are "significant." The court concludes its analysis by determining if conditions imposed by the legislation are reasonable and are appropriate in relation to the purpose of the legislation. (For a recent summary of the Contract Clause in Wisconsin law, see *Reserve Life Ins. Co. v. LaFollette*, 323 N.W.2d 173 (Ct. App. 1982).)

The multi-step analysis for the court, as summarized in the previous paragraph, shows that the Contract Clause is not absolute, but that the state has authority to exercise its regulatory powers for the benefit of the public, even though the result may affect existing contracts. Also, enactments by the Legislature are entitled to a presumption of constitutionality in relation to legal challenges under the Contract Clause. The person seeking to prove a statute to be unconstitutional faces the substantial burden of proving that it is unconstitutional beyond a reasonable doubt, which is the highest evidentiary standard.

Compensation Clause

The Wisconsin Constitution, Article 1, Section 13, requires that the state must pay "just compensation" for private property that is taken for the benefit of the public. An owner of MFL land could argue that the ability to receive rental income from MFL is a property right, was allowable under the former statute, and that the new statute, by prohibiting this, deprives the owner of an aspect of the property rights that were available to the owner under the former statute. (This assumes that the owner does not have a lease in effect on closed recreational land, which would make the more direct challenge available under the Contract Clause.)

The owner could bring an inverse condemnation action under s. 32.10, Stats., in order to seek compensation for the taking. Although the statutes for MFL have not at any time expressly allowed the owner to enter a lease of recreational land, the current administrative rules for the MFL includes a NOTE that acknowledges the possibility of such a lease under the former statutes. The NOTE follows a definition of "developed for commercial recreation," a term that is used in the statutes.

Note: This definition is not meant to preclude or prohibit a landowner from leasing land for hunting or other recreational activities compatible with the practice of forestry which are consistent with the open or closed area restrictions under s. 77.83, Stats. [Section NR 46.15, Wis. Adm. Code.]

The owner could also argue that the statutes expressly state that the restrictions on MFL land will not be changed for the duration of the DNR order, and that the owner should have a reasonable assurance that the potential for leasing the land would continue as part of the owner's expectations for the property.

77.82 (11) Duration. An order under this subchapter remains in effect for the period specified in the petition unless the land is withdrawn under s. 77.84 (3) (b) or 77.88. An amendment to or repeal of this subchapter does not affect the terms of an order or management plan, except as expressly agreed to in writing by the owner and the department and except as provided in sub. (11m).

A restrictive regulation may constitute a taking under Wisconsin case law, even if there is no physical occupation of the property by the government. However, like the Contract Clause cases, regulatory taking cases are difficult to win. The courts require that the regulation must deprive the owner of all or substantially all of the value of the property in order to trigger just compensation, which is often not the case with a particular regulation. This legal standard leaves substantial latitude for the adoption of regulations for the benefit of the public, such as the MFL amendments in the Budget Act that take less than substantially all of the value of the property. The next question for the court in a challenge to police power regulations under the Compensation Clause is to determine if the regulations chosen by the Legislature bears a reasonable relationship to the purpose of the enactment. This is a fairly relaxed legal standard, which makes it fairly easy for the government to defend the statute.

Considerations Apart From Legal Issues

The response to your question is necessarily a prediction of how a court will rule in the lawsuit. Courts can be unpredictable, and the results of a lawsuit can be much different than anticipated.

In a lawsuit challenging the constitutionality of a statute, the outcome can be affected by many factors. For example, the specific facts regarding the plaintiff's land and lease may make it harder or easier for a court to find the statute to be unconstitutional. The financial resources and aggressiveness of the plaintiff, and the effectiveness of counsel, can have a major effect on the outcome of the lawsuit. The judges involved in the case are an important consideration, for example, in terms of the extent that the individual judges are inclined to give deference to legislative decisions.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

MCP:jb:ty:ksm:jal



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3610/1

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Wed

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

UPB. Pls space ✓

Ben Cat

✓

- 1 AN ACT ...; relating to: acreage payments of managed forest land subject to a
2 lease or other agreement that has as a purpose to permit persons to engage in
3 certain recreational activities.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the managed forest land (MFL) program. The MFL program exempts an owner of land that is designated MFL from payment of municipal property taxes on the MFL in exchange for a lower payment per acre. In exchange, the owner must comply with certain forestry practices and must allow the public on the MFL under certain circumstances unless the landowner elects to pay an extra amount per acre to keep a limited number of acres closed. MFL must be open to hunting, fishing, hiking, sight-seeing, and cross-country skiing. If an owner of MFL does not want to permit this access, the owner may pay an extra amount per acre, and the MFL is designated as closed. Current law imposes restrictions on the amount of MFL that may be closed. ✓

Current law prohibits an owner from ^{2 of 577} MFL from entering into a lease or agreement to allow limited access to certain persons to engage certain recreational activities, including those listed above. ✓ An exception is provide for agreements that are made with nonprofit organizations under which the only payment consists of membership fees and that are approved by DNR.

This bill repeals this provision. In its place, the bill allows such leases and agreements, but the MFL subject to the lease or agreement is assessed at a higher amount per acre that that which is applicable to MFL that is designated closed. The exception for agreements with nonprofit organizations remains.

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For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 74.25 (1) (a) 6. of the statutes is amended to read:

2 74.25 (1) (a) 6. Pay to the county treasurer 20% of collections of occupational
3 taxes on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84
4 (2) (a) and (am), ~~and~~ all collections of payments for closed lands under s. 77.84 (2) (b)
5 and (bm), and all collections of payments for limited-access lands under s. 77.84 (2)
6 (br) and (bv). ✓

History: 1987 a. 378; 1989 a. 56, 104; 1991 a. 39; 2001 a. 16; 2003 a. 33, 228; 2005 a. 241, 418; s. 13.93 (2) (c).

7 **SECTION 2.** 74.30 (1) (f) of the statutes is amended to read:

8 74.30 (1) (f) Pay to the county treasurer 20% of collections of occupational taxes
9 on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84 (2)
10 (a) and (am), ~~and~~ all collections of payments for closed lands under s. 77.84 (2) (b) and
11 (bm), and all collections of payments for limited-access lands under s. 77.84 (2) (br)
12 and (bv). ✓

History: 1987 a. 378; 1991 a. 39; 1995 a. 408; 2001 a. 16; 2003 a. 33, 228; 2005 a. 241, 418; s. 13.93 (2) (c).

13 **SECTION 3.** 77.82 (2) (g) of the statutes is amended to read:

14 77.82 (2) (g) A map, diagram or aerial photograph showing the location and
15 acreage of any area that will be designated as ~~closed to the public~~ ^{being} or as being limited
16 access under s. 77.83.

History: 1985 a. 29; 1989 a. 31; 1993 a. 16, 131, 301, 491; 1995 a. 27; 1997 a. 27, 35, 237; 2001 a. 109; 2003 a. 228; 2005 a. 25, 64, 299; s. 13.93 (2) (c).

17 **SECTION 4.** 77.82 (3) (c) 5. of the statutes is amended to read:

18 77.82 (3) (c) 5. A map, diagram or aerial photograph which identifies the open,
19 closed, and limited-access areas designated as ~~open and closed~~ under s. 77.83.

History: 1985 a. 29; 1989 a. 31; 1993 a. 16, 131, 301, 491; 1995 a. 27; 1997 a. 27, 35, 237; 2001 a. 109; 2003 a. 228; 2005 a. 25, 64, 299; s. 13.93 (2) (c).

20 **SECTION 5.** 77.83 (1m) of the statutes is amended to read:

1 77.83 (1m) MODIFICATION OF DESIGNATION. For a managed forest land order that
2 takes effect on or after April 28, 2004, the owner of the managed forest land may
3 modify the designation of a closed ~~or~~ ^{RAIN} limited-access, ~~or~~ open area 2 times during the
4 term of the order. For a managed forest land order that takes effect before April 28,
5 2004, the owner of the managed forest land may modify the designation of a closed
6 ~~or~~ ^{PLAN} limited access, ~~or~~ open area 2 times during the period beginning with April 28,
7 2004, and ending with the expiration date of the order, regardless of whether the
8 owner has previously modified the designation as authorized by rules promulgated
9 by the department.

History: 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299; 2007 a. 20.

10 **SECTION 6.** 77.83 (1r) of the statutes is created to read:

11 77.83 (1r) LIMITED-ACCESS AREAS. (a) An owner may designate land subject to
12 a managed forest land order as being limited-access land. Land will be so designated
13 only if the owner permits limited access to the land as authorized under a lease or
14 other agreement involving consideration and if the only purpose of the lease or
15 agreement is to permit persons to engage in a recreational activity. ✓

16 (b) Notwithstanding par. (a), land subject to a lease or agreement as described
17 under par. (a) shall be designated as being closed instead of limited ~~access~~ ^{access} if the
18 consideration paid for access under the lease or agreement consists solely of
19 reasonable membership fees charged by a nonprofit organization and the lease or
20 agreement is approved by the department. ✓

21 **SECTION 7.** 77.83 (2) (a) of the statutes is amended to read:

1 77.83 (2) (a) Except as provided in sub. ~~subs.~~ (1) ~~and (1m)~~ and pars. (b) and (c),
2 each owner of managed forest land shall permit public access to the land for hunting,
3 fishing, hiking, sight-seeing and cross-country skiing.

History: 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299; 2007 a. 20.

4 **SECTION 8.** 77.83 (2) (am) of the statutes is repealed.

5 **SECTION 9.** 77.83 (4) (title) and (a) of the statutes are consolidated and
6 renumbered 77.83 (4).

7 **SECTION 10.** 77.83 (4) (b) of the statutes is repealed.

8 **SECTION 11.** 77.84 (1) of the statutes is amended to read:

9 77.84 (1) TAX ROLL. Each clerk of a municipality in which the land is located
10 shall enter in a special column or other appropriate place on the tax roll the
11 description of each parcel of land designated as managed forest land, and shall
12 specify, by the designation "MFL-O" or "MFL-C" or "MFL-LA", the acreage of each
13 parcel that is designated as open or, closed, or limited access under s. 77.83. The
14 land shall be assessed and is subject to review under ch. 70. Except as provided in
15 this subchapter, no tax may be levied on managed forest land, except that any
16 building on managed forest land is subject to taxation as personal property under ch.
17 70.

History: 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299.

18 **SECTION 12.** 77.84 (2) (title) of the statutes is amended to read:

19 77.84 (2) (title) ACREAGE SHARE; ~~PAYMENT~~ PAYMENTS FOR OPEN, CLOSED, OR
20 LIMITED-ACCESS LAND.

History: 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299.

History: 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299.

21 **SECTION 13.** 77.84 (2) (b) of the statutes is amended to read:

22 77.84 (2) (b) For managed forest land orders that take effect before April 28,
23 2004, in addition to the payment under par. (a), each owner of managed forest land

BILL

1 77.83 (2) (a) Except as provided in ~~sub-~~ subs. (1) and (1r) and pars. (b) and (c),
2 each owner of managed forest land shall permit public access to the land for hunting,
3 fishing, hiking, sight-seeing, and cross-country skiing.

4 **SECTION 8.** 77.83 (2) (am) of the statutes, as created by 2007 Wisconsin Act 20,
5 is repealed.

6 **SECTION 9.** 77.83 (4) (title) and (a) of the statutes, as affected by 2007 Wisconsin
7 Act 20, are consolidated and renumbered 77.83 (4).

8 **SECTION 10.** 77.83 (4) (b) of the statutes, as created by 2007 Wisconsin Act 20,
9 is repealed.

10 **SECTION 11.** 77.84 (1) of the statutes is amended to read:

11 77.84 (1) TAX ROLL. Each clerk of a municipality in which the land is located
12 shall enter in a special column or other appropriate place on the tax roll the
13 description of each parcel of land designated as ~~managed~~ ^{STRIKE} forest land, and shall
14 specify, by the designation "MFL-O," ~~or~~ ^{or} "MFL-C," ~~or~~ ^{or} "MFL-LA," the acreage of each
15 parcel that is designated as open or, closed, or limited access under s. 77.83. The land
16 shall be assessed and is subject to review under ch. 70. Except as provided in this
17 subchapter, no tax may be levied on managed forest land, except that any building
18 on managed forest land is subject to taxation as personal property under ch. 70.

19 **SECTION 12.** 77.84 (2) (title) of the statutes is amended to read:

20 77.84 (2) (title) ACREAGE SHARE; ~~PAYMENT~~ PAYMENTS FOR OPEN, CLOSED, OR
21 LIMITED-ACCESS LAND.

22 **SECTION 13.** 77.84 (2) (b) of the statutes is amended to read:

23 77.84 (2) (b) For managed forest land orders that take effect before April 28,
24 2004, in addition to the payment under par. (a), each owner of managed forest land

1 shall pay \$1 for each acre that is designated as closed under s. 77.83. The payment
2 shall be made to each municipal treasurer on or before January 31. ✓

3 **History:** 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299.

3 **SECTION 14.** 77.84 (2) (br) of the statutes is created to read:

4 77.84 (2) (br) For managed forest land orders that take effect before April 28,
5 2004, in addition to the payment under par. (a), each owner of managed forest land
6 shall pay \$2 for each acre that is designated as limited access under s. 77.83. The
7 payment shall be made to each municipal treasurer on or before January 31. ✓

8 **History:** 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299.

8 **SECTION 15.** 77.84 (2) (bv) of the statutes is created to read:

9 77.84 (2) (bv) For managed forest land orders that take effect on or after April
10 28, 2004, in addition to the payment under par. (am), each owner of managed forest
11 land shall pay to each municipal treasurer, on or before January 31, and amount that
12 is equal to 45 percent of the average statewide property tax per acre of property
13 classified under s. 70.32 (2) (a) 6., as determined under par. (cm), for each acre that
14 is designated as limited access under s. 77.83. ✓

15 **SECTION 16.** 77.84 (2) (c) of the statutes is amended to read:

16 77.84 (2) (c) In 1992 and each 5th year thereafter, the department of revenue
17 shall adjust the amounts under pars. (a) and ~~(b), (b), and (br)~~ ✓ by multiplying the
18 amount specified by a ratio using as the denominator the department of revenue's
19 estimate of the average statewide tax per acre of property classes under s. 70.32 (2)
20 (b) 4., 1993 stats., s. 70.32 (2) (b) 5., 1993 stats., and s. 70.32 (2) (b) 6., 1993 stats.,
21 for 1986 and, as the numerator, the department of revenue's estimate of the average
22 tax per acre for the same classes of property for the year in which the adjustment is
23 made.

24 **History:** 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299.

24 **SECTION 17.** 77.84 (2) (cm) of the statutes is amended to read:

77.84 (2) (cm) For purposes of determining the per acre amounts under pars. (am) and (bm), (bm), and (bv)[✓], in 2004 and in 2007 and each 5th year thereafter, the department of revenue shall determine the average statewide tax per acre of property classified under s. 70.32 (2) (a) 6. by multiplying the average equalized value of property classified under s. 70.32 (2) (a) 6., as determined under s. 70.57, by the average tax rate determined under s. 76.126.

History: 1985 a. 29; 1987 a. 378; 1995 a. 27; 1997 a. 35; 2003 a. 228; 2005 a. 299.

SECTION 18. 77.88 (2) (e) of the statutes is amended to read:

77.88 (2) (e) The transferred land shall remain managed forest land if the transferee, within 30 days after the transfer, certifies to the department an intent to comply with the existing management plan for the land and with any amendments agreed to by the department and the transferee, and provides proof that each person holding any encumbrance on the land agrees to the designation. The transferee may designate an area of the transferred land as closed to public access or as limited access as provided under s. 77.83. The department shall issue an order continuing the designation of the land as managed forest land under the new ownership.

History: 1985 a. 29; 1991 a. 39; 1993 a. 16, 131; 1995 a. 27; 1999 a. 150 s. 672; 2003 a. 228; 2005 a. 64, 299.

SECTION 19. Initial applicability.

(1) This act first applies to payments under section 77.84 (2) of the statutes that are due on January 1, 2009. ✓

(END)

Gibson-Glass, Mary

From: Fiocchi, Tim
Sent: Thursday, January 31, 2008 3:14 PM
To: Gibson-Glass, Mary
Subject: LRB 3610

Hi Mary,

A few quick things on the draft. First, we completely eliminated the changes in the budget under 77.83 (2) (am) but don't re-create the penalty for leasing land not enrolled in tier 3. In an effort to not have the Senate get extra annoyed with us, we need to put that back in. Second, I wanted to double check that we maintain the current exemption for non-profits (not sure if that was changed).

DNR also asked why everything was pegged to 2004 – not that it was a problem, but they asked if there was a reason.

Because of the time crunch to get a hearing, I don't want to wait to send out the bill for co-sponsorship, so could you draft the revision into a simple/ sub amendment?

Thanks,

Tim

Tim Fiocchi
Office of Representative Jeff Wood
(608) 266 1194

En

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✓
[Signature]

2007 BILL

ReGen

✓

1 AN ACT *to repeal* 77.83 (2) (am) and 77.83 (4) (b); *to consolidate and renumber*
2 77.83 (4) (title) and (a); *to amend* 74.25 (1) (a) 6., 74.30 (1) (f), 77.82 (2) (g), 77.82
3 (3) (c) 5., 77.83 (1m), 77.83 (2) (a), 77.84 (1), 77.84 (2) (title), 77.84 (2) (b), 77.84
4 (2) (c), 77.84 (2) (cm) and 77.88 (2) (e); and *to create* 77.83 (1r), 77.84 (2) (br)
5 and 77.84 (2) (bv) of the statutes; **relating to:** acreage payments of managed
6 forest land subject to a lease or other agreement that has as a purpose to permit
7 persons to engage in certain recreational activities.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the managed forest land (MFL) program. The MFL program exempts an owner of land that is designated MFL from payment of municipal property taxes on the MFL in exchange for a lower payment per acre. In exchange, the owner must comply with certain forestry practices and must allow the public on the MFL under certain circumstances unless the landowner elects to pay an extra amount per acre to keep a limited number of acres closed. MFL must be open to hunting, fishing, hiking, sight-seeing and cross-country skiing. If an owner of MFL does not want to permit this access, the owner may pay an extra amount per acre, and the MFL is designated as closed. Current law imposes restrictions on the amount of MFL that may be closed.

BILL

Current law prohibits an owner of MFL from entering into a lease or agreement to allow limited access to certain persons to engage in certain recreational activities, including those listed above. An exception is provided for agreements that are made with nonprofit organizations under which the only payment consists of membership fees and that are approved by DNR.

This bill repeals this provision. In its place, the bill allows such leases and agreements, but the MFL subject to the lease or agreement is assessed at a higher amount per acre than that which is applicable to MFL that is designated closed. The exception for agreements with nonprofit organizations remains.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 74.25 (1) (a) 6. of the statutes is amended to read:

2 74.25 (1) (a) 6. Pay to the county treasurer 20% of collections of occupational
3 taxes on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84
4 (2) (a) and (am), and all collections of payments for closed lands under s. 77.84 (2) (b)
5 and (bm), and all collections of payments for limited-access lands under s. 77.84 (2)
6 ~~(br)~~ and (bv).

7 **SECTION 2.** 74.30 (1) (f) of the statutes is amended to read:

8 74.30 (1) (f) Pay to the county treasurer 20% of collections of occupational taxes
9 on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84 (2)
10 (a) and (am), and all collections of payments for closed lands under s. 77.84 (2) (b) and
11 (bm), and all collections of payments for limited-access lands under s. 77.84 (2) ~~(br)~~
12 ~~and~~ (bv).

13 **SECTION 3.** 77.82 (2) (g) of the statutes is amended to read:

14 77.82 (2) (g) A map, diagram or aerial photograph showing the location and
15 acreage of any area that will be designated as closed to the public or as limited access
16 under s. 77.83.

BILL

1 **SECTION 4.** 77.82 (3) (c) 5. of the statutes is amended to read:

2 77.82 (3) (c) 5. A map, diagram or aerial photograph which identifies the open,
3 closed, and limited-access areas ~~designated as open and closed~~ under s. 77.83.

4 **SECTION 5.** 77.83 (1m) of the statutes is amended to read:

5 77.83 (1m) MODIFICATION OF DESIGNATION. For a managed forest land order that
6 takes effect on or after April 28, 2004, the owner of the managed forest land may
7 modify the designation of a closed, limited-access, or open area 2 times during the
8 term of the order. For a managed forest land order that takes effect before April 28,
9 2004, the owner of the managed forest land may modify the designation of a closed,
10 limited access, or open area 2 times during the period beginning with April 28, 2004,
11 and ending with the expiration date of the order, regardless of whether the owner has
12 previously modified the designation as authorized by rules promulgated by the
13 department.

14 **SECTION 6.** 77.83 (1r) of the statutes is created to read:

15 77.83 (1r) LIMITED-ACCESS AREAS. (a) An owner may designate land subject to
16 a managed forest land order as being limited-access land. Land will be so designated
17 only if the owner permits limited access to the land as authorized under a lease or
18 other agreement involving consideration and if the only purpose of the lease or
19 agreement is to permit persons to engage in a recreational activity.

20 (b) Notwithstanding par. (a), land subject to a lease or agreement as described
21 under par. (a) shall be designated as being closed instead of limited access if the
22 consideration paid for access under the lease or agreement consists solely of
23 reasonable membership fees charged by a nonprofit organization and the lease or
24 agreement is approved by the department.

25 **SECTION 7.** 77.83 (2) (a) of the statutes is amended to read:

BILL

1 77.83 (2) (a) Except as provided in ~~sub.~~ subs. (1) and (1r) and pars. (b) and (c),
2 each owner of managed forest land shall permit public access to the land for hunting,
3 fishing, hiking, sight-seeing, and cross-country skiing.

4 **SECTION 8.** 77.83 (2) (am) of the statutes, as created by 2007 Wisconsin Act 20,
5 is repealed.

6 **SECTION 9.** 77.83 (4) (title) and (a) of the statutes, as affected by 2007 Wisconsin
7 Act 20, are consolidated and renumbered 77.83 (4).

8 **SECTION 10.** 77.83 (4) (b) of the statutes, as created by 2007 Wisconsin Act 20,
9 is repealed.

10 **SECTION 11.** 77.84 (1) of the statutes is amended to read:

11 77.84 (1) TAX ROLL. Each clerk of a municipality in which the land is located
12 shall enter in a special column or other appropriate place on the tax roll the
13 description of each parcel of land designated as managed forest land, and shall
14 specify, by the designation "MFL-O," ~~or~~ "MFL-C", or "MFL-LA." the acreage of
15 each parcel that is designated as open or, closed, or limited access under s. 77.83. The
16 land shall be assessed and is subject to review under ch. 70. Except as provided in
17 this subchapter, no tax may be levied on managed forest land, except that any
18 building on managed forest land is subject to taxation as personal property under ch.
19 70.

20 **SECTION 12.** 77.84 (2) (title) of the statutes is amended to read:

21 77.84 (2) (title) ACREAGE SHARE; ~~PAYMENT~~ PAYMENTS FOR OPEN, CLOSED, OR
22 LIMITED-ACCESS LAND.

23 **SECTION 13.** 77.84 (2) (b) of the statutes is amended to read:

24 77.84 (2) (b) For managed forest land orders that take effect before April 28,
25 2004, in addition to the payment under par. (a), each owner of managed forest land

INS
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BILL

1 shall pay \$1 for each acre that is designated as closed under s. 77.83. The payment
2 shall be made to each municipal treasurer on or before January 31.

3 **SECTION 14.** 77.84 (2) (br) of the statutes is created to read:

4 77.84 (2) (br) For managed forest land orders that take effect before April 28,
5 2004, in addition to the payment under par. (a), each owner of managed forest land
6 shall pay \$2 for each acre that is designated as limited access under s. 77.83. The
7 payment shall be made to each municipal treasurer on or before January 31.

8 **SECTION 15.** 77.84 (2) (bv) of the statutes is created to read:

9 77.84 (2) (bv) For managed forest land orders that take effect on or after April
10 28, 2004, in addition to the payment under par. (a) or (am), each owner of managed forest
11 land shall pay to each municipal treasurer, on or before January 31, an amount that
12 is equal to 45 percent of the average statewide property tax per acre of property
13 classified under s. 70.32 (2) (a) 6., as determined under par. (cm), for each acre that
14 is designated as limited access under s. 77.83.

15 **SECTION 16.** 77.84 (2) (c) of the statutes is amended to read:

16 77.84 (2) (c) In 1992 and each 5th year thereafter, the department of revenue
17 shall adjust the amounts under pars. (a) and (b), (b), and (br) by multiplying the
18 amount specified by a ratio using as the denominator the department of revenue's
19 estimate of the average statewide tax per acre of property classes under s. 70.32 (2)
20 (b) 4., 1993 stats., s. 70.32 (2) (b) 5., 1993 stats., and s. 70.32 (2) (b) 6., 1993 stats.,
21 for 1986 and, as the numerator, the department of revenue's estimate of the average
22 tax per acre for the same classes of property for the year in which the adjustment is
23 made.

24 **SECTION 17.** 77.84 (2) (cm) of the statutes is amended to read:

SECTION 17

(END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3610/lins
MGG:lmk:pg

Insert 4-9

SECTION 1. 77.83 (4) (b) of the statutes, as created by 2007 Wisconsin Act 20,
is amended to read:

77.83 (4) (b) Any person who owner who enters into a lease that fails to comply
with sub. (2) (am) (1r) or fails to comply with any of the terms of a lease entered into
under sub. (1r) shall forfeit an amount equal to the total amount of consideration
received by the person owner as a result of violating sub. (2) (am) the failure to comply
or \$500, whichever is greater.

History: 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299; 2007 a. 20.

Kite, Robin

From: Fiocchi, Tim
Sent: Tuesday, February 05, 2008 3:35 PM
To: Kite, Robin
Subject: FW: Corrected notes on MFL draft

Attachments: 07-36102.pdf Notes.pdf

*77.83 (2) (am) *waters*

1. For land designated as managed forest land no person may enter into a lease or other agreement for consideration if the purpose of the lease or agreement is to permit persons to engage in a recreational activity except as provided under 77.83 (1r). *for managed forest land*

2. Subdivision 1 does not apply to any lease or other agreement if the consideration involved solely consists of reasonable membership fees charged by a nonprofit organization and the lease or agreement is approved by the department.

Tim Fiocchi
Office of Representative Jeff Wood
(608) 266 1194



07-36102.pdf
Votes.pdf (239 KB...

*cell: 712-7727
2608*

*intent - to make it
clear lease or agreement
not necessary to get
designation
take out 2. becuz redundant*

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1 77.82 (3) (c) 5. A map, diagram or aerial photograph which identifies the open,
2 closed, and limited-access areas designated as ~~open and closed~~ under s. 77.83.

3 **SECTION 5.** 77.83 (1m) of the statutes is amended to read:

4 **77.83 (1m) MODIFICATION OF DESIGNATION.** For a managed forest land order that
5 takes effect on or after April 28, 2004, the owner of the managed forest land may
6 modify the designation of a closed, limited-access, or open area 2 times during the
7 term of the order. For a managed forest land order that takes effect before April 28,
8 2004, the owner of the managed forest land may modify the designation of a closed,
9 limited access, or open area 2 times during the period beginning with April 28, 2004,
10 and ending with the expiration date of the order, regardless of whether the owner has
11 previously modified the designation as authorized by rules promulgated by the
12 department.

13 **SECTION 6.** 77.83 (1r) of the statutes is created to read:

14 **77.83 (1r) LIMITED-ACCESS AREAS.** (a) An owner may designate land subject to
15 a managed forest land order as being limited-access land. Land will be so designated
16 only if the owner permits limited access to the land as authorized under a lease or
17 other agreement involving consideration and if the only purpose of the lease or
18 agreement is to permit persons to engage in a recreational activity.

19 (b) Notwithstanding par. (a), land subject to a lease or agreement as described
20 under par. (a) shall be designated as being closed instead of limited access if the
21 consideration paid for access under the lease or agreement consists solely of
22 reasonable membership fees charged by a nonprofit organization and the lease or
23 agreement is approved by the department.

24 **SECTION 7.** 77.83 (2) (a) of the statutes is amended to read:



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3610/2
MGG:lxk:nwn

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Shays

2007 BILL

NOW-(editing)
TODAY-otherwise

managed forest land
for which there
is limited access
for persons to
engage in
certain
recreational
activities

an owner may limit
to which access ~~may be limited~~

ReGen

✓

1 AN ACT to repeal 77.83 (2) (am); to amend 74.25 (1) (a) 6., 74.30 (1) (f), 77.82 (2)
2 (g), 77.82 (3) (c) 5., 77.83 (1m), 77.83 (2) (a), 77.83 (4) (b), 77.84 (1), 77.84 (2)
3 (title), 77.84 (2) (b), 77.84 (2) (cm) and 77.88 (2) (e); and to create 77.83 (1r) and
4 77.84 (2) (bv) of the statutes; relating to: acreage payments of managed forest
5 land subject to a lease or other agreement that has as a purpose to permit
6 persons to engage in certain recreational activities.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the managed forest land (MFL) program. The MFL program exempts an owner of land that is designated MFL from payment of municipal property taxes on the MFL in exchange for a lower payment per acre. In exchange, the owner must comply with certain forestry practices and must allow the public on the MFL under certain circumstances unless the landowner elects to pay an extra amount per acre to keep a limited number of acres closed. MFL must be open to hunting, fishing, hiking, sight-seeing and cross-country skiing. If an owner of MFL does not want to permit this access, the owner may pay an extra amount per acre, and the MFL is designated as closed. Current law imposes restrictions on the amount of MFL that may be closed.

Current law prohibits an owner of MFL from entering into a lease or agreement to allow limited access to certain persons to engage in certain recreational activities,

BILL

including those listed above. An exception is provided for agreements that are made with nonprofit organizations under which the only payment consists of membership fees and that are approved by DNR.

This bill repeals this provision. In its place, the bill allows ~~such leases and agreements~~ ^{limited access} 1, but the MFL ~~subject to the lease or agreement~~ is assessed at a higher amount per acre than that which is applicable to MFL that is designated closed. The exception for agreements with nonprofit organizations remains.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 74.25 (1) (a) 6. of the statutes is amended to read:

2 74.25 **(1)** (a) 6. Pay to the county treasurer 20% of collections of occupational
3 taxes on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84
4 (2) (a) and (am), and all collections of payments for closed lands under s. 77.84 (2) (b)
5 and (bm), and all collections of payments for limited-access lands under s. 77.84 (2)
6 (bv).

7 **SECTION 2.** 74.30 (1) (f) of the statutes is amended to read:

8 74.30 **(1)** (f) Pay to the county treasurer 20% of collections of occupational taxes
9 on coal docks, 20% of collections of the taxes imposed under ss. 77.04 and 77.84 (2)
10 (a) and (am), and all collections of payments for closed lands under s. 77.84 (2) (b) and
11 (bm), and all collections of payments for limited-access lands under s. 77.84 (2) (bv).

12 **SECTION 3.** 77.82 (2) (g) of the statutes is amended to read:

13 77.82 **(2)** (g) A map, diagram or aerial photograph showing the location and
14 acreage of any area that will be designated as closed to the public or as limited access
15 under s. 77.83.

16 **SECTION 4.** 77.82 (3) (c) 5. of the statutes is amended to read:

BILL

1 77.82 (3) (c) 5. A map, diagram or aerial photograph which identifies the open,
2 closed, and limited-access areas ~~designated as open and closed~~ under s. 77.83.

3 **SECTION 5.** 77.83 (1m) of the statutes is amended to read:

4 77.83 (1m) MODIFICATION OF DESIGNATION. For a managed forest land order that
5 takes effect on or after April 28, 2004, the owner of the managed forest land may
6 modify the designation of a closed, limited-access, or open area 2 times during the
7 term of the order. For a managed forest land order that takes effect before April 28,
8 2004, the owner of the managed forest land may modify the designation of a closed,
9 limited access, or open area 2 times during the period beginning with April 28, 2004,
10 and ending with the expiration date of the order, regardless of whether the owner has
11 previously modified the designation as authorized by rules promulgated by the
12 department.

13 **SECTION 6.** 77.83 (1r) of the statutes is created to read:

14 77.83 (1r) LIMITED-ACCESS AREAS. (a) An owner may designate land subject to
15 a managed forest land order as being limited-access land. Land will be so designated
16 only if the owner permits limited access to the land as authorized under a lease or
17 other agreement involving consideration and if the only purpose of the lease or
18 agreement is to permit persons to engage in a recreational activity.

19 (b) Notwithstanding par. (a), land subject to a lease or agreement as described
20 under par. (a) shall be designated as being closed instead of limited access if the
21 consideration paid for access under the lease or agreement consists solely of
22 reasonable membership fees charged by a nonprofit organization and the lease or
23 agreement is approved by the department.

24 **SECTION 7.** 77.83 (2) (a) of the statutes is amended to read:

BILL

SECTION 7

1 77.83 (2) (a) Except as provided in sub. subs. (1) and (1r) and pars. (b) and (c),
2 each owner of managed forest land shall permit public access to the land for hunting,
3 fishing, hiking, sight-seeing, and cross-country skiing.

4 ~~SECTION 8. 77.83 (2) (am) of the statutes, as created by 2007 Wisconsin Act 20,~~
5 ~~is repealed.~~ INS
4-8

6 ~~SECTION 9. 77.83 (4) (b) of the statutes, as created by 2007 Wisconsin Act 20,~~
7 is amended to read:

8 ~~77.83 (4) (b) Any person who owner who enters into a lease that~~ PLAIN STET
9 ~~with sub. (2) (am) (1r) or fails to comply with any of the terms of a lease entered into~~
10 ~~under sub. (1r) shall forfeit an amount equal to the total amount of consideration~~
11 ~~received by the person owner as a result of violating sub. (2) (am) the failure to comply~~ PLAIN
12 or \$500, whichever is greater.

13 SECTION 10. 77.84 (1) of the statutes is amended to read:

14 77.84 (1) TAX ROLL. Each clerk of a municipality in which the land is located
15 shall enter in a special column or other appropriate place on the tax roll the
16 description of each parcel of land designated as managed forest land, and shall
17 specify, by the designation "MFL-O," or "MFL-C," or "MFL-LA," the acreage of
18 each parcel that is designated as open or, closed, or limited access under s. 77.83. The
19 land shall be assessed and is subject to review under ch. 70. Except as provided in
20 this subchapter, no tax may be levied on managed forest land, except that any
21 building on managed forest land is subject to taxation as personal property under ch.
22 70.

23 SECTION 11. 77.84 (2) (title) of the statutes is amended to read:

24 77.84 (2) (title) ACREAGE SHARE; PAYMENT PAYMENTS FOR OPEN, CLOSED, OR
25 LIMITED-ACCESS LAND.

BILL

1 **SECTION 12.** 77.84 (2) (b) of the statutes is amended to read:

2 77.84 (2) (b) For managed forest land orders that take effect before April 28,
3 2004, in addition to the payment under par. (a), each owner of managed forest land
4 shall pay \$1 for each acre that is designated as closed under s. 77.83. The payment
5 shall be made to each municipal treasurer on or before January 31.

6 **SECTION 13.** 77.84 (2) (bv) of the statutes is created to read:

7 77.84 (2) (bv) In addition to the payment under par. (a) or (am), each owner of
8 managed forest land shall pay to each municipal treasurer, on or before January 31,
9 an amount that is equal to 45 percent of the average statewide property tax per acre
10 of property classified under s. 70.32 (2) (a) 6., as determined under par. (cm), for each
11 acre that is designated as limited access under s. 77.83.

12 **SECTION 14.** 77.84 (2) (cm) of the statutes is amended to read:

13 77.84 (2) (cm) For purposes of determining the per acre amounts under pars.
14 (am) and (bm), (bm), and (bv), in 2004 and in 2007 and each 5th year thereafter, the
15 department of revenue shall determine the average statewide tax per acre of
16 property classified under s. 70.32 (2) (a) 6. by multiplying the average equalized
17 value of property classified under s. 70.32 (2) (a) 6., as determined under s. 70.57, by
18 the average tax rate determined under s. 76.126.

19 **SECTION 15.** 77.88 (2) (e) of the statutes is amended to read:

20 77.88 (2) (e) The transferred land shall remain managed forest land if the
21 transferee, within 30 days after the transfer, certifies to the department an intent
22 to comply with the existing management plan for the land and with any amendments
23 agreed to by the department and the transferee, and provides proof that each person
24 holding any encumbrance on the land agrees to the designation. The transferee may
25 designate an area of the transferred land as closed to public access or as limited

BILL

1 access as provided under s. 77.83. The department shall issue an order continuing
2 the designation of the land as managed forest land under the new ownership.

3 **SECTION 16. Initial applicability.**

4 (1) This act first applies to payments under section 77.84 (2) of the statutes that
5 are due on January 1, 2009.

6 (END)

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3610/2ins
MGG:lxk:nwn

Insert 4-8

SECTION 1. 77.83 (2) (am) 1. of the statutes, as ^{created} ~~affected~~ by 2007 Wisconsin Act 20, is amended to read:

77.83 (2) (am) 1. ^{PLAIN} ~~For Except as provided in sub. (1r), for~~ land designated as managed forest land ~~under an order that takes effect on or after October 27, 2007,~~ no person may enter into a lease or other agreement for consideration if the purpose of the lease or agreement is to permit persons to engage in a recreational activity.

History: 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299; 2007 a. 20.

SECTION 2. 77.83 (2) (am) 3. of the statutes, as created by 2007 Wisconsin Act 20, is amended to read:

77.83 (2) (am) 3. ~~Subdivisions 1. and 2. do~~ Subdivision 1. does not apply to any lease or other agreement if the consideration involved solely consists of reasonable membership fees charged by a nonprofit organization and the lease or agreement is approved by the department.

History: 1985 a. 29; 1989 a. 79; 1993 a. 131; 2003 a. 228; 2005 a. 299; 2007 a. 20.

SECTION 3. 77.83 (2) (am) 2. ~~and 3~~ of the statutes, as created by 2007 Wisconsin Act 20, is repealed.

MOVE

*except as provided
in sub. (1r)*

Basford, Sarah

From: Fiocchi, Tim
Sent: Thursday, February 07, 2008 10:24 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-3610/3 Topic: Use of managed forest land for commercial recreation

Please Jacket LRB 07-3610/3 for the ASSEMBLY.